FOR MYSORE STATE

Revenue (1953) Decem

Ms. SERIES.

G.O. No. 2113

Dated 21.7.53

[Despatch Abstract.]

Tax — The Madras General Sales Tax Act 1939 - (Salem) - S.T.R. 24 of 26 to 30 of 51 on the file of the Judicial District Magistrate, Salem Prosecution U/s: 15 (b) - Acquitted - Further action - Orders issued.

Abstract

TAX – The Madras General Sales Tax Act, 1939 – (Salem) – S.T.R.24 and 26 to 30 of 1951 on the file of the Judicial District Magistrate, Salem Prosecution under section 15(b) – Acquittal – Further action – Orders ~~passed~~ issued.

Revenue Department

G.O.Ms.No.2113 Dated 21st July 1953.

Read the following:—

Government Memorandum No.27786-M/52-5, Revenue, dated 8-10-1952.
From the Board of Revenue, Ref.B.212/53-1, dated 2-5-1953.

...

ORDER:

In their memorandum read above, the Government held the view that in a case where a person had been prosecuted under section 15(b) of the Madras General Sales Tax Act for non-payment of tax and the Criminal Court which tried the case had, in spite of the provisions of section 16A of the Act, questioned the liability of the person charged to pay tax or reduced the tax payable, the only remedy was to appeal against the order of the Court, that if, in any such case, no appeal was filed in time, the judgment of the Criminal Court, however mistaken in law it was, held the field and must be respected and given effect to, and that the Commercial Taxes Department cannot proceed to recover under section 10 of the Act, the balance of tax payable by the person charged. The Government have since re-examined the position. Under section 10 of the Madras General Sales Tax Act, the amount of the tax due may be recovered as if it were an arrear of land revenue. Section 15(b) ~~x~~ provides that any person who fails to pay, within the time allowed, any tax assessed on him or any fee due from him, shall be liable to conviction by the criminal court. It further provides that in the case of a conviction, the Magistrate shall specify in the order the tax, fee or other amount, which the person convicted has failed or evaded to pay or has wrongfully collected and the tax, fee or amount so specified shall be recoverable as ~~xx xx~~ if it were a fine. Thus, while under section 10, the unpaid tax can be recovered as if it were an arrear of land revenue, under section 15(b) the said amount is recoverable as fine. Section 16-A of the Act lays down that the validity of the assessment of any tax, or of the levy of any fee or other amount, made under the Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding whether under the Act or otherwise. It therefore follows that in a proceeding resulting from non-payment of tax, the Magistrate is not competent to enter into the question of the validity or the quantum of the assessed amount and that any decision by him on such questions has no legal validity. Normally therefore when once a person is assessed to tax, there would be no question of his acquittal by the Magistrate. If such acquittal be due to the absence of the complainant or such like technical reasons, the Magistrate need not mention in the order the amount payable by the accused. The result is that the operation of section 10 remains intact and the assessed amount can therefore be realised from the assessee as if it were an arrear of land revenue under section 10 of the Act.

2. With reference to the views in para 1 above the Board is requested to instruct the Commercial Taxes authorities to take action to recover the balance of tax due in the cases referred to in its Reference read above.

(By order of the Governor)

T.J. JACQUES,
Deputy Secretary to Government.

To
The Board of Revenue (C.T.).
Copy to Stock File.
Copy to Andhra Government.
Copy to Mysore Government.

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Forwarded/By order

22/7/53.
Superintendent.

Kvnr/21.7